

IN RE: PETITION FOR SPECIAL HEARING & ZONING VARIANCE
NE/S. Cardwell Avenue, 1044 ft.
from 211 Solair Road
4342 Cardwell Avenue
14th Election District
6th Councilmanic District
Philip E. Bertoldi
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 92-182-SPHA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing and Petition for Zoning Variance filed by the property owner, Philip E. Bertoldi, for that property known as 4242 Cardwell Avenue. As to the Petition for Zoning Variance, the Petitioner seeks an exemption from Section 1802.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a minimum lot width of 50 ft. in lieu of the required 55 ft. in a D.R. 5.5 zone. Although not specifically noted on the Petition, the Petitioner also requires a variance from the minimum net lot area per dwelling unit requirement within Section 1802.3.C.1; which mandates that the lot must be 6000 sq. ft. in area. The subject property is 5,850 sq. ft. Therefore, the Petition for Variance will be amended to reflect that request as well.

In the alternative, to the above referenced relief, the Petitioner seeks a variance from Section 304 of the B.C.Z.R. to permit development on an undersized single family lot. In conjunction with this request, Mr. Bertoldi has petitioned for a special hearing to address those requirements set forth in Section 304 and the Zoning Commissioner's Policy Manual to

determine if the erection of a 24 ft. x 28 ft. rancher dwelling should be allowed on the property known as 4242 Cardwell Avenue. For the reasons set forth below, I shall grant the requested variances from Section 1802.3.C.1, thereby rendering moot any determination of the requested variance from Section 304 and the special hearing.

The Petitioner/property owner, Philip E. Bertoldi, appeared and testified at the public hearing. Also appearing and testifying on behalf of the Petition was Lorraine Gordon from the Linover Improvement Association, Inc. and Harry Imbold, who resides across the street. Appearing in opposition to the Petition was Jerry A. Walls, Lisa Ruxham, Leslie Kaleo and Harvey F. Swepe. Both sides also submitted Petitions signed by numerous residents of this community both favoring and opposing the Petitioner's request.

The Petitioner testified that he originally owned two adjoining lots in the community, known as 4240 and 4242 Cardwell Avenue. Lot 4240 is improved with an existing dwelling which the Petitioner occupied. The lot known as 4242 was vacant and remains so. The Petitioner testified that he always intended on placing a second house on the vacant lot, however, suffered a series of personal tragedies in 1989 and 1990. Due to these unfortunate circumstances and financial difficulties, he sold the improved lot and dwelling thereon to Mr. Walls and Ms. Ruxham in November of 1990. It was disputed as to the exact nature of any representations made during that time, however, the Petitioner testified he advised the purchasers that he intended on returning to the neighborhood and developing the empty lot. Although, they acknowledge this conversation, Mr. Walls and Ms. Ruxham dispute the time frame which Mr. Bertoldi expressed for that construction.

In support of the Petition, Mr. Bertoldi noted that his is the only lot on that portion of Cardwell Avenue which is undeveloped. He described

the area as an older subdivision consisting of homes similar in design and concept to that house which he proposes to construct. As is evident from the exhibits presented, this is an older subdivision and nearly all of the lots are undersized when compared with the current regulations.

Also testifying on behalf of the Petition was Mrs. Gordon and Mr. Imbold. Mrs. Gordon indicated that she concurred with Mr. Bertoldi's assessment that development of the property in the manner proposed would provide the only reasonable use for the subject lot. Mr. Imbold testified that Mr. Bertoldi had always kept good care of the properties when he was the owner/resident prior to November of 1990.

Mr. Walls and Ms. Ruxham testified that they do not want a house located on the lot immediately next door to their residence. Although acknowledging that Mr. Bertoldi had advised them that he intended to build, they stated that he indicated at the time of the sale of their lot that he had no plans to build for 3 or 4 years at the minimum. They also believed Mr. Bertoldi to be a land speculator and that he will build and sell/lease the house and not occupy same as he has indicated. They were concerned about depreciation of their property value and the dangers that the construction process may bring to their home.

Mr. Swepe and Ms. Kaleo also appeared and testified in opposition of the Petition. They noted that there are other vacant houses on the street and that if Mr. Bertoldi wants to live in the neighborhood, he could purchase one of those available units. They also fear that he will build, then lease the property.

It is apparent that only by granting the requested variances, could the Petitioner enjoy any reasonable use of his property. Further, it is significant that the Petitioner's proposal is entirely consistent with the

neighborhood. I am particularly persuaded to grant the variance in view of the fact that all of the other lots in the immediate location are undersized. In addressing the Protestants' fears, I believe them to be unfounded. Mr. Bertoldi desires to place on the lot a use which is entirely consistent with the existing uses in the immediate location. That is, Mr. Bertoldi does not propose any commercial use, only to construct a dwelling similar in style to those in the community. Further, whether the property is either owner occupied or leased, is not a permissible consideration of my decision making process. Although open spaces are naturally preferable in a residential location, to deny the variances requested would unreasonably burden the property owner.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

ORDER RECEIVED FOR FILING
Date 12/16/91
By Mr. Bertoldi

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public good.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if the variances were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variances requested will not be detrimental to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 12th day of Dec., 1991, that the Petition for Special Hearing from Section 1802.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a minimum lot width of 50 ft., in lieu of the required 55 ft.; and a lot of 5,850 sq. ft. in area, in lieu of the required 6,000 sq. ft. in area, in a D.R. 5.5 zone, in accordance with Petitioner's Exhibit No. 1, be and is hereby GRANTED, subject, however, to the restriction below which is a condition precedent to the relief granted herein; and,

IT IS FURTHER ORDERED that due to that portion of the Order granting a variance from Section 1802.3.C.1 of the B.C.Z.R., the Petition for Zoning Variance from Section 304 and the Petition for Special Hearing is hereby rendered moot:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk

ORDER RECEIVED FOR FILING
Date 12/16/91
By Mr. Bertoldi

until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mmn

ORDER RECEIVED FOR FILING
Date 12/16/91
By Mr. Bertoldi

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

December 5, 1991

Mr. Philip E. Bertoldi
8907 Harford Road
2nd floor
Baltimore, Maryland 21234

RE: Petition for Special Hearing
Case No. 92-182-SPH

Dear Mr. Bertoldi:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Hearing has been granted, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 897-3391.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmn
att.
cc: Ms. Lorraine Gordon
Mr. Harry Imbold
Mr. Jerry A. Walls
Ms. Leslie Kaleo
Mr. Harvey F. Swepe

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

92-182-SPHA

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 506.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve

The Petitioner is: Philip E. Bertoldi
The Address is: 8907 Harford Road
As to the City and State: Baltimore, Md.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee: _____ Legal Owner(s): Philip E. Bertoldi
(Type or Print Name) (Type or Print Name)
Signature: _____ Signature: _____
Address: _____ (Type or Print Name)
City and State: _____ Signature: _____
Attorney for Petitioner: 907 Harford Rd. 887-3353
(Type or Print Name) Address Phone No.
Signature: Leslie Kaleo City and State: Md. 21234
Address: _____ Name, address and phone number of legal owner, contract purchaser or representative to be contacted
City and State: _____ Name _____
Attorney's Telephone No.: _____ Address Phone No. _____



OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING - 1/2HR. + 1HR.
AVAILABLE FOR HEARING
ALL MON./TUES./WED. - NEXT TWO MONTHS
REVIEWED BY: _____ DATE: _____

Zoning Case No. 92-182-SPHA

BEGINNING ON THE NORTHEAST SIDE OF SARDWELL AVENUE WHICH IS 40 FEET WIDE AT A DISTANCE OF 1093.95 FEET SOUTHEAST IN THE CENTERLINE OF LOT 40 IN THE SOUTHWEST 1/4 OF SECTION 10, TOWNSHIP 10N, RANGE 10E, RECORDS IN BALTIMORE COUNTY PLAT BOOK L-MCL 11108, PAGES 75, CONTAINING 5850 SQUARE FEET, ALSO KNOWN AS 4842 SARDWELL AVE. AND LOCATED IN THE 14TH ELECTION DISTRICT.

92-182-SPHA

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 10th Date of Posting: 11/17/91
Posted for: Philip E. Bertoldi
Petitioner: Philip E. Bertoldi
Location of property: NE/S Sardwell Avenue, 1094' from c/l Belair Rd.
NE/S Sardwell Avenue
Location of Sign: Philip E. Bertoldi, 8907 Harford Road, Baltimore, MD 21234
Remarks: Original Petition
Posted by: Matthew Date of return: 11/25/91
Number of Signs: 2

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in the NORTHEAST TIMES BOOSTER and the NORTHEAST TIMES REPORTER, weekly newspapers published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 11/7/91.

NORTHEAST TIMES BOOSTER and the
NORTHEAST TIMES REPORTER

S. Zeke Olson
Publisher

\$70.76

CERTIFICATE OF PUBLICATION

TOWSON, MD. 11/7/91
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 11/7/91.

THE JEFFERSONIAN.

S. Zeke Olson

Publisher

\$70.76



Baltimore County
Zoning Commission
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R 001 6150
Number

Date

Cashier Validation

Please Make Checks Payable To: Baltimore County \$70.00
EE 0031372*11/07/91



Baltimore County
Zoning Commission
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R 001 6150
Number

Date

Cashier Validation

Please Make Checks Payable To: Baltimore County \$70.00
EE 0031372*11/07/91

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

NOTE: 11/15/91

Philip E. Bertoldi
8907 Harford Road
Baltimore, Maryland 21234

RE:
CASE NUMBER: 92-182-SPHA
NE/S Sardwell Avenue, 1094' from c/l Belair Road
4242 Cardwell Avenue
14th Election District - 6th Councilmanic
Petitioner(s): Philip E. Bertoldi

Dear Petitioner(s):

Please be advised that \$ 120.76 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID. ALSO, THE ZONING SIGN & POST SET(S) MUST BE RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your order, immediate attention to this matter is suggested.

Carl Jahn

ARNOLD JASLOW
DIRECTOR

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106, Baltimore County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 92-182-SPHA
NE/S Sardwell Avenue, 1094' from c/l Belair Road
4242 Cardwell Avenue
14th Election District - 6th Councilmanic
Petitioner(s): Philip E. Bertoldi
HEARING: WEDNESDAY, NOVEMBER 27, 1991 at 2:00 p.m.

Variance to allow a minimum lot width of 50 feet in lieu of the required 55 feet for property of contiguous ownership within a year.
Special Hearing to approve the erection of a 24 ft. x 28 ft. rancher home on the aforesaid property known as 4242 Cardwell Avenue.

Lawrence E. Schmidt

Zoning Commissioner of
Baltimore County

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

November 12, 1991

Mr. Philip E. Bertoldi
8907 Harford Road
Baltimore, MD 21234

RE: Item No. 172, Case No. 92-182-SPHA
Petitioner: Philip E. Bertoldi
Petition for Special Hearing

Dear Mr. Bertoldi:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a review by Zoning personnel.

Zoning Plans Advisory Committee Comments
Date: November 12, 1991
Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys and/or engineers who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the loss of filing fee.

Very truly yours,

James E. Dyer
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

Yours truly,

Philip E. Bertoldi

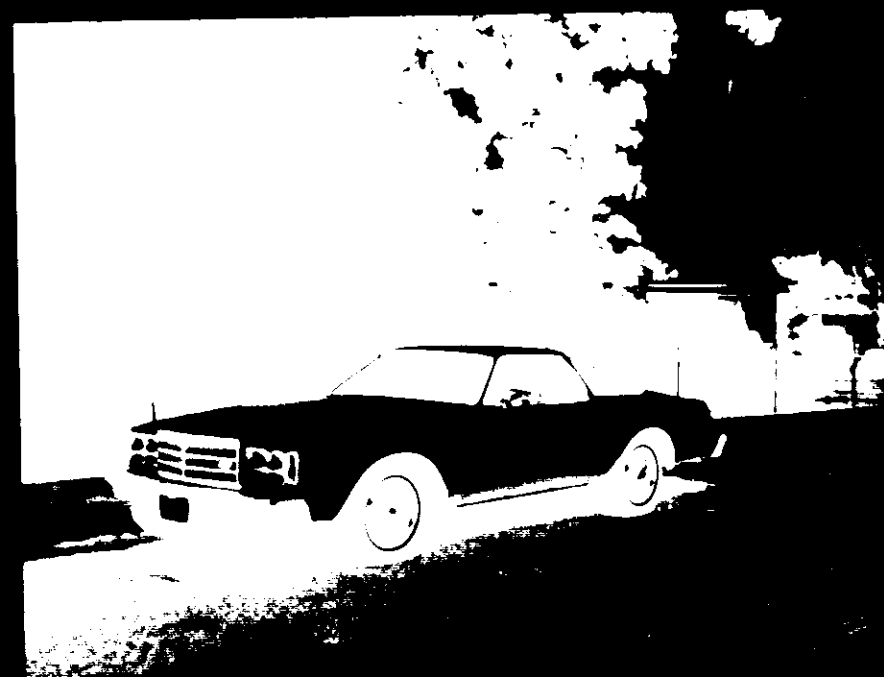
WE THE UNDERSIGNED APPROVE OF MR.
BERTOLDI'S PLANS TO ERECT A HOME ON
THE VACANT LOT AT 4242 CARDWELL AV.

NAME	ADDRESS
Henry B. Arnold	4243 Cardwell Ave.
Gerald L. LeBrun	4246 Cardwell Ave.
Theresa M. Wooden	4236 Cardwell Ave.
Sharon Ridgeway	4239 Cardwell Ave.
Edna R. Wynn	4235 Cardwell Ave.
Arthur Williams	4248 Cardwell Ave.

PLANNERS
UNIT No 6

VACANT { 4241 CARDWELL
4245 CARDWELL

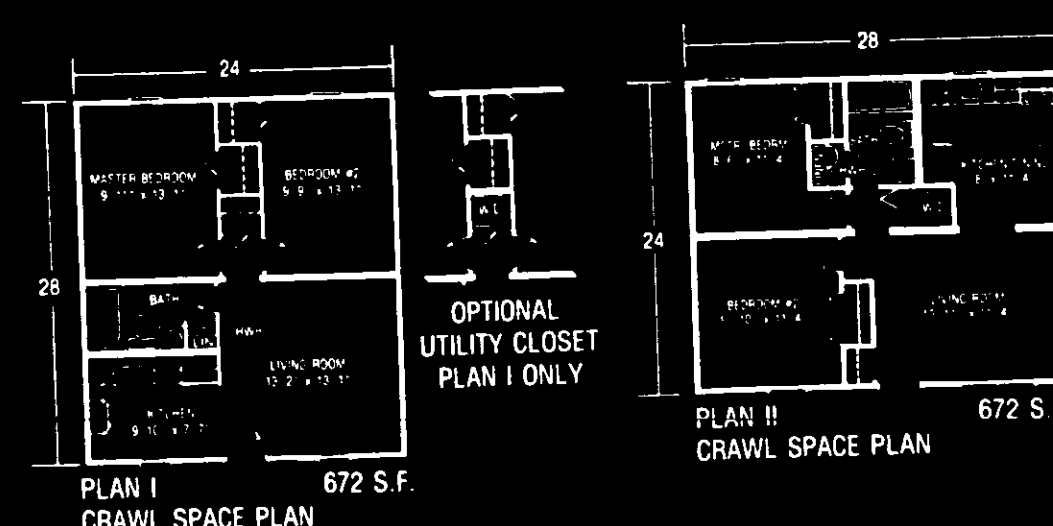
92-182-SPH



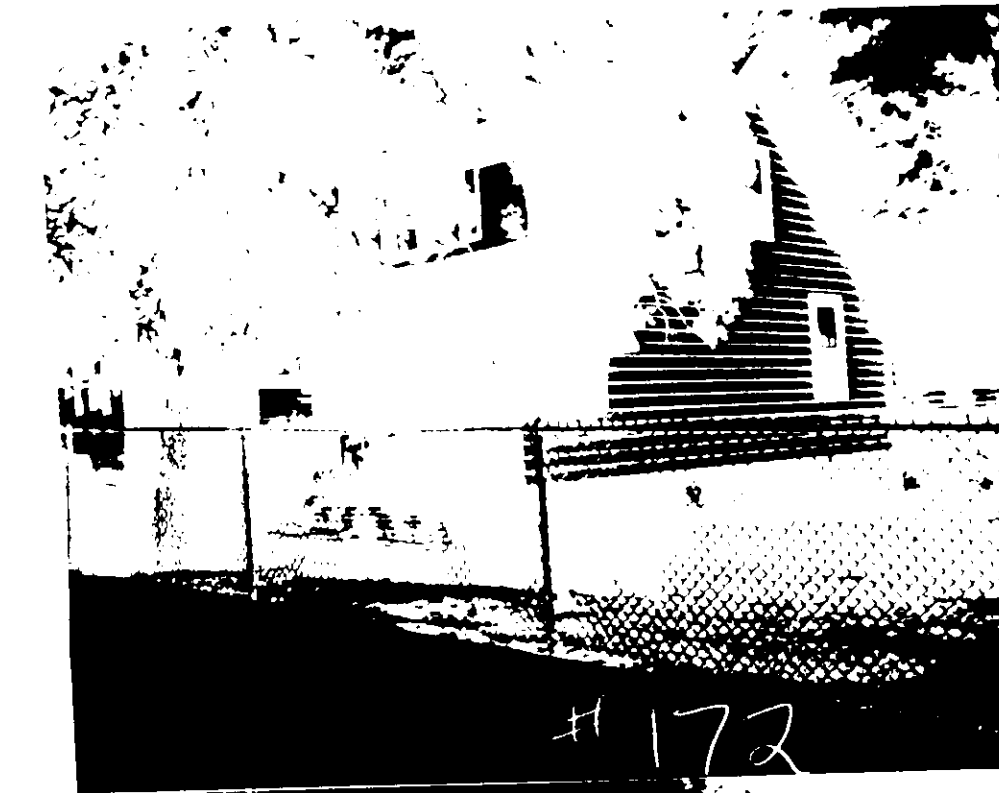
NORTH AMERICAN
HOUSING

TIMBERLINE

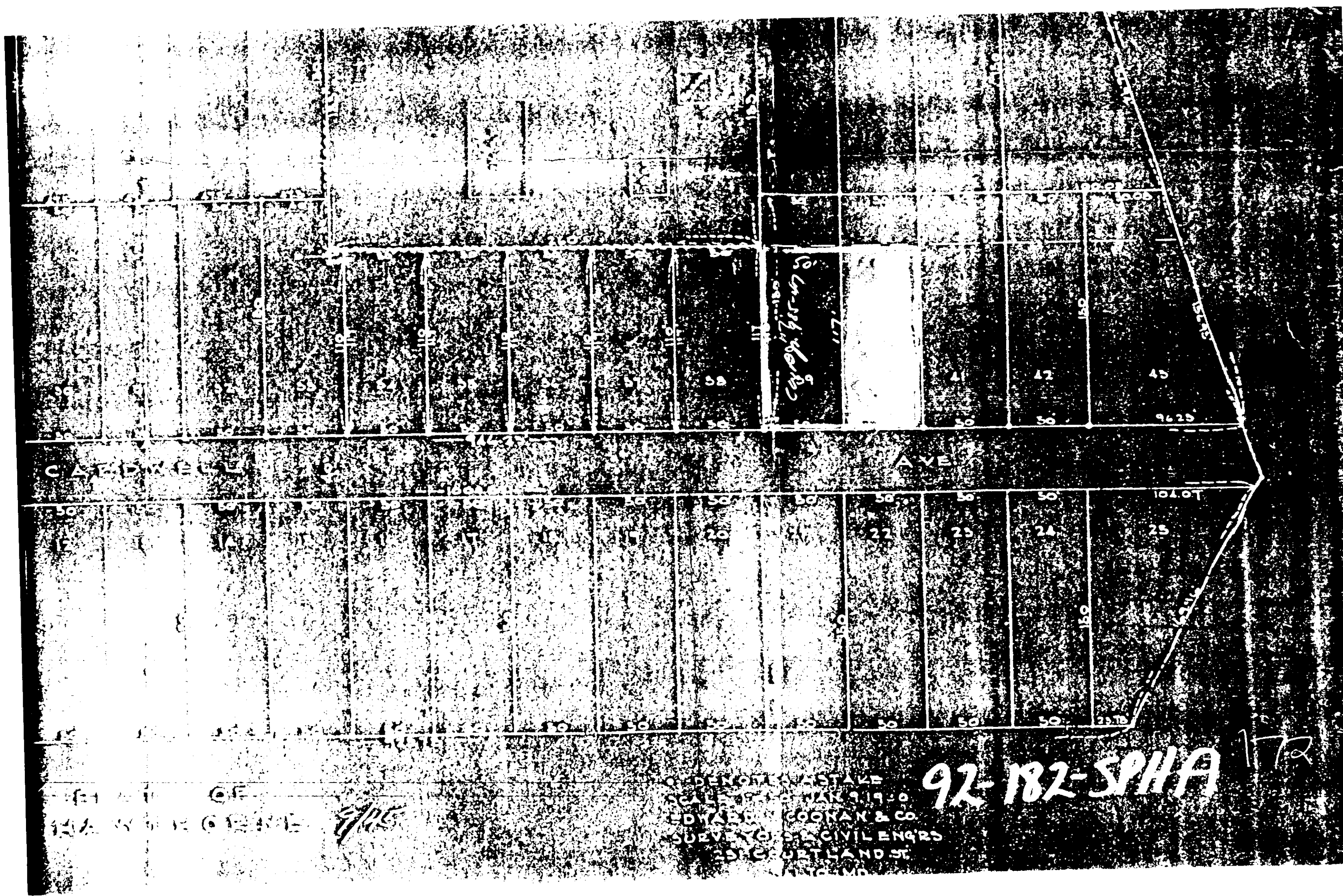
RAMBLER
2824



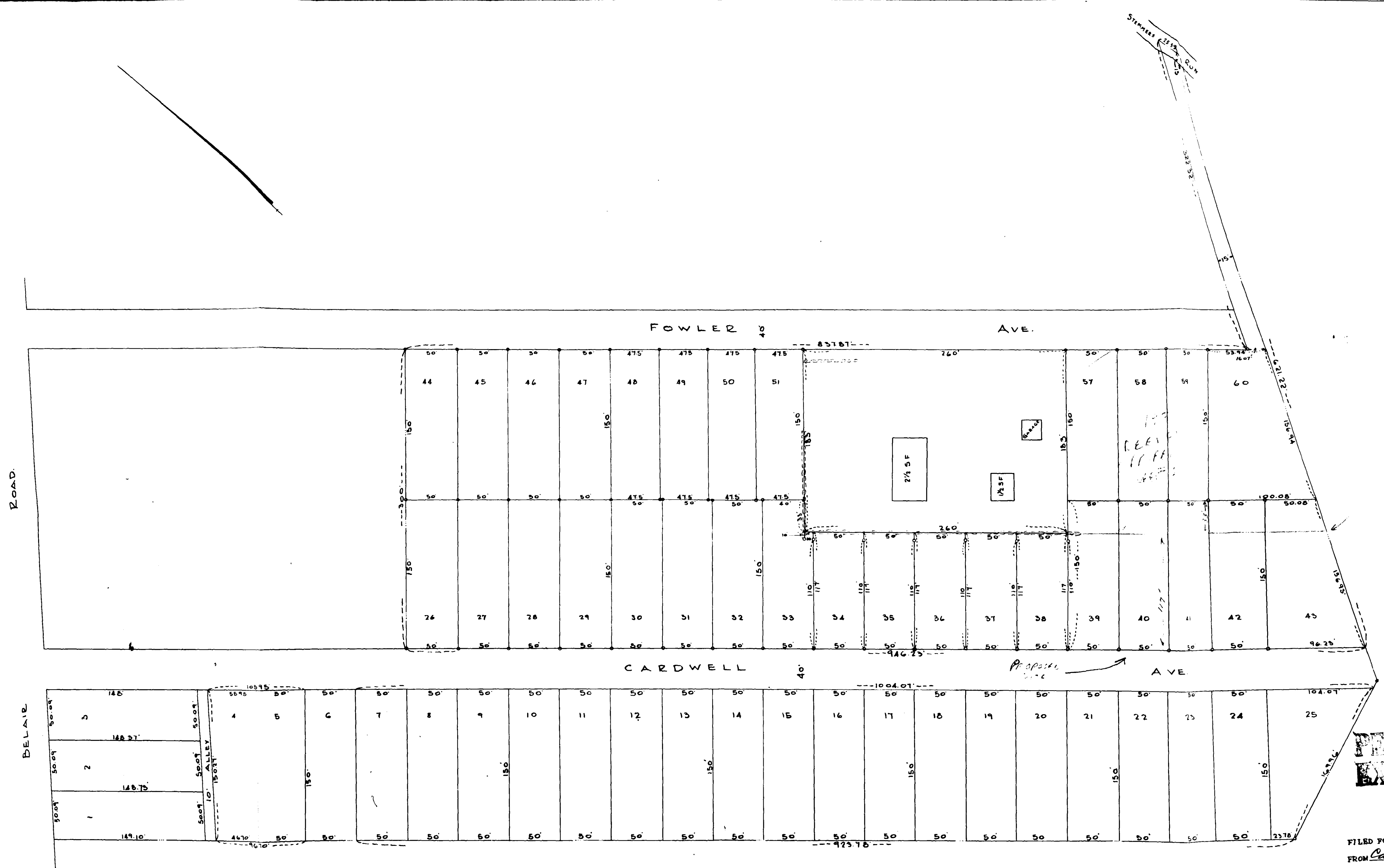
ALL FLOOR PLANS AND ROOM SIZES ARE APPROXIMATE
P.O. BOX 21
POINT OF ROCKS, MD 21777
(301) 694-9100
P.O. BOX 21
BOONES MILL, VA 24065
(703) 334-5800
4 BID WAY, UNIT NO. 11
NASHUA, NH 03083
(603) 595-9900
Rev. 1-90
Plans, Prices And Specifications Subject To Change Without Notice Copyright 1991



92-182-SPHA



92-182-SPHA



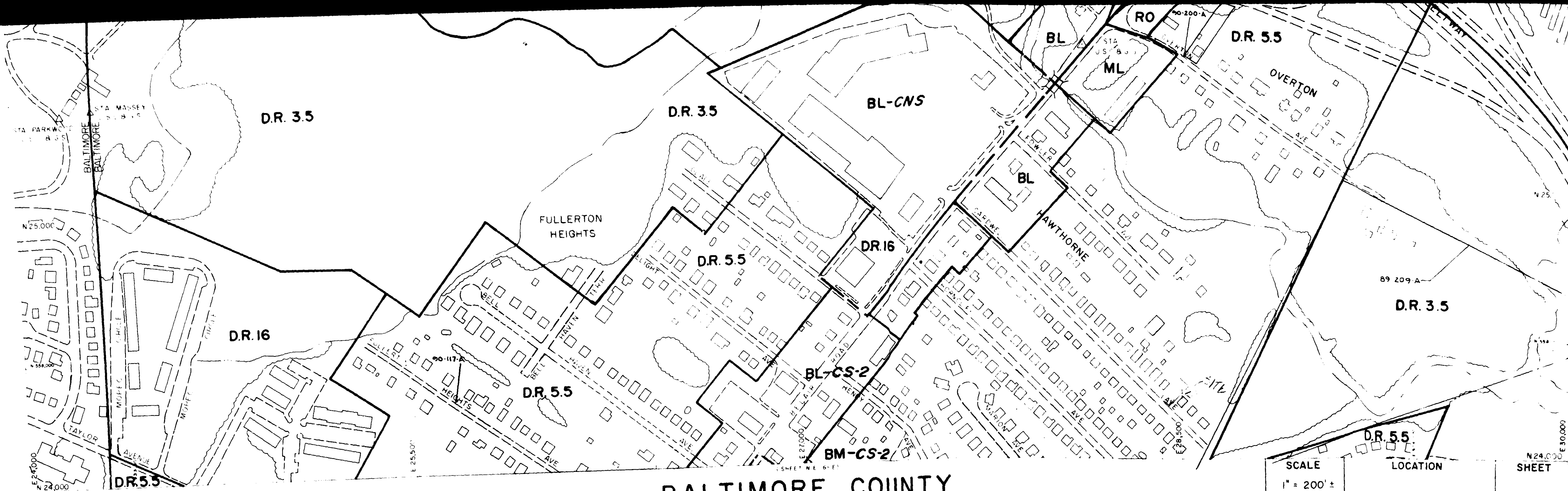
PLAT OF
HAYTHORNE

--- DENOTES A STAKE
SCALE 1" = 50' JAN. 9, 1930
EDWARD Y. COONAN & CO.
SURVEYORS & CIVIL ENGINEERS
231 COURT LAND ST.
BALTO., MD.

**PETITIONER'S
EXHIBIT No 2**

FILED FOR RECORD WITH Deed
FROM Camille Grace Pa
TO Worke
JAN 21 1930
TEST John P. ... CLERK

NIC 2856811



1988 COMPREHENSIVE ZONING MAP
 Adopted by the Baltimore County Council
 Oct. 13, 1988
 BM Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88
 Chairman, County Council

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING OFFICIAL ZONING MAP

SCALE 1" = 200' ±	LOCATION FULLERTON OVERLEA	SHEET N.E. 7-E
DATE OF PHOTOGRAPHY JANUARY 1986		

172 92-182-SPHA



BALTIMORE COUNTY 92-182-SPHA OFFICE OF PLANNING AND ZONING PHOTOGRAPHIC MAP

SCALE 1" = 200' ±	LOCATION FULLERTON OVERLEA	SHEET N.E. 7-E
DATE OF PHOTOGRAPHY JANUARY 1986		

PREPARED BY AIR PHOTOGRAPHICS, INC.
 MARTINSBURG, W.V. 25401